

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

LEROY JOHNSON, JR.,

Plaintiff,

vs.

CORRECTIONAL OFFICER HERREN, *et al.*,

Defendants.

Civil Action 2:13-cv-583
Judge Economus
Magistrate Judge King

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner, filed the complaint in this action on June 19, 2013 but did not submit a summons for any of the named defendants. On June 20, 2013, the undersigned ordered that service of process be effected by the United States Marshals Service on defendant Herren and recommended that the claims against defendants Mohr, Willingham, Ackley and Chamberlain be dismissed. *Order and Report and Recommendation*, Doc. No. 5. That recommendation was adopted without objection on August 6, 2013. *Order*, Doc. No. 8. This matter is now before the Court on plaintiff's motion for default judgment against all defendants. *Motion for Default Judgment*, Doc. No. 11.

The claims against all defendants except defendant Herren have been dismissed. As to defendants Mohr, Willingham, Ackley and Chamberlain, plaintiff's motion for default judgment is without merit. As noted, plaintiff has not submitted a summons for defendant Herren and the record does not indicate that service of process has been effected on this defendant. As it relates to defendant Herren,

plaintiff's *Motion for Default Judgment* is likewise without merit.

It is therefore **RECOMMENDED** that plaintiff's *Motion for Default Judgment*, Doc. No. 11, be denied.

If plaintiff intends to pursue the action against defendant Herren, he must provide a copy of the *Complaint*, a summons and a Marshal's service form for this defendant. Plaintiff is advised that the claims against defendant Herren will be dismissed if service of process is not effected on him by October 20, 2013. See Fed. R. Civ. P. 4(m).

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Fed'n of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge

DATE: August 19, 2013